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7

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 MARCO MARTINEZ,
11 Plaintiff,

12 v.

13 CITY OF SAN DIEGO; COUNTY OF
14 SAN DIEGO; CITY OF IMPERIAL BEACH;
and
15 DOES 1 to 20, inclusive,

16 Defendants.

17 CITY OF IMPERIAL BEACH,

18 Cross-Complainant,

19 v.

20 UNITED STATES POSTAL SERVICE, and
21 ROES 1-20,

22 Cross-Defendant.
23

Civil No. '11CV0527 JLS NLS

**NOTICE OF REMOVAL TO UNITED
STATES DISTRICT COURT**
(28 U.S.C. §§ 1441, 1442, 2679(b)(1))

Formerly
Superior Court case no. 37-2010-00076963-CU-
PO-SC; Hon. William S. Cannon; Dept. S-04

24 COMES NOW the Cross-Defendant, the United States Postal Service, and through the
United States Attorney for the Southern District of California, Laura E. Duffy, with Thomas B.
25 Reeve, Jr., Assistant U. S. Attorney, respectfully notices the removal of the above-captioned
26 matter to United States District Court for the Southern District of California, pursuant to
27 28 U.S.C. §§ 1442, etc.
28

1. A federal agency, the United States Postal Service has been named as a Cross-Defendant in the above-captioned case now pending in the Superior Court of California, San Diego County, case no. 37-2010-00076963-CU-PO-SC, and no trial has yet been had therein.
2. It does not appear that service under Fed. R. Civ. P. § 4(i) has been completed upon the United States Postal Service. However, the United States Attorney is aware of the action.
3. Removal of this case is appropriate under 28 U.S.C. § 1442, as the Cross-Defendant, United States Postal Service, is an agency of the United States.
4. Section 1442 states, in part:
 - (a) A civil action ... commenced in state court against any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending ... (1) The United States or any agency thereof28 U.S.C. § 1442(a)(1).
5. This action is properly removable to this Court, as the Southern District of California embraces the place in which the above-captioned civil action is pending and it also appears to be the district within which the underlying events occurred.
6. A further basis for removal is that the claims appear to be for monetary recovery arising from an alleged personal injury. As such, this matter that can be brought, if at all, only upon compliance with and under the provisions of the Federal Tort Claims Act (28 U.S.C. §§ 1346(b), 2671-2680) ("FTCA").
7. United States District Courts have exclusive jurisdiction over FTCA litigation pursuant to 28 U.S.C. §§ 1346(b)(1) & 2679(b)(1).
 - the district courts ... shall have exclusive jurisdiction of civil actions on claims against the United States for money damages ... for ... personal injury28 U.S.C. 1346(b)(1).
 - (b)(1) The remedy against the United States ... for injury or loss ... arising or resulting from the negligent or wrongful act or omission of any employee of the Government ... is exclusive of any other civil action or proceeding for money damages Any other civil action ... is precluded28 U.S.C. § 2679(b)(1).

- 1 8. It is anticipated that the Cross-Defendant may raise several defenses to the claims in the
2 complaint, including: (1) that the indemnity action is premature and there is no Article III
3 (case or controversy) jurisdiction for it to now be heard, (2) That FTCA is a limited and
4 conditional waiver of sovereign immunity and failure to fully satisfy and comply with the
5 FTCA results in a lack of subject matter jurisdiction, and (3) that Cross-Defendant, United
6 States Postal Service is an improper defendant under the FTCA, and (4) such other and
7 further defenses as are determined to be appropriate after investigation of the matter.
- 8 9. A copy of the cross-complaint is concurrently filed as Exhibit A.
- 9 10. A copy of the underlying complaint is concurrently filed as Exhibit B.

10 Respectfully submitted,

11 March 17, 2011

LAURA E. DUFFY
United States Attorney

12 /s/ **Thomas B. Reeve, Jr.**
13 THOMAS B. REEVE, JR.
14 Assistant U.S. Attorney
Attorneys for Defendant
15 United States Postal Service
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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Marco Martinez

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Patrick G. Shea, Mitchell & Shea
2368 Second Avenue, San Diego, CA 92101 (619) 702-6517

DEFENDANTS

PLEASE SEE ATTACHMENT

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

'11CV0527 JLS NLS**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 1441, 1442, 2679(b)(1)

Brief description of cause:

Personal Injury indemnity action against the United States Postal Service

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

3/17/2011

Thomas B. King Assistant U.S. Attorney

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

ATTACHMENT TO CIVIL COVER SHEET

PLAINTIFF

Marco Martinez

DEFENDANTS

City of San Diego; County of San Diego; City of Imperial Beach; and Does 1 to 20; inclusive

CROSS-COMPLAINANT

City of Imperial Beach

CROSS-DEFENDANT

United States Postal Service, and Roes 1-20

ATTORNEYS

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Attorney for Plaintiff Marco Martinez

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Attorneys for Defendant and Cross-Complainant City of Imperial Beach

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92101, (619) 557-7159
Attorney for Cross-Defendant the United States Postal Service